

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
9

10 FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
FRONTIER BANK,

11 Plaintiff,

12 v.

13 MICHAEL J. CLEMENTZ, et al.,

14 Defendants.

15 CASE NO. C13-737 MJP

16 ORDER DENYING PLAINTIFF'S
MOTION FOR A PROTECTIVE
ORDER

17 THIS MATTER comes before the Court on the Parties' Local Rule 37 Joint Submission
18 regarding Plaintiff's Motion for a Protective Order. (Dkt. Nos. 144, 147.) Having considered
19 the briefing and the related record, the Court DENIES the motion but does not order production
20 of the documents.

21 Plaintiff seeks a protective order allowing it to withhold twelve documents that include
22 information about the FDIC-Corporate's regulatory enforcement actions against Frontier Bank
23 under the "law enforcement investigatory privilege." (Dkt. No. 147 at 13-14.) Plaintiff argues
24 the law enforcement investigatory privilege prohibits the release of governmental information

1 that would harm an agency's investigative or enforcement efforts, and contends that producing
 2 the twelve documents here would harm the FDIC's investigatory and enforcement efforts. (*Id.*)
 3 (citing Hassan v. United States, 2006 WL 681038, at *3 (W.D. Wash. Mar. 15, 2006), and SEC
 4 v. Rosenfeld, 1997 U.S. Dist. LEXIS 13996 (S.D.N.Y. 1997)).

5 Assuming a law enforcement investigatory privilege applies in this context, Plaintiff has
 6 failed to demonstrate how or why production of these documents could harm any investigatory
 7 or enforcement efforts. The FDIC's investigation of Frontier Bank concluded long ago, and
 8 Frontier Bank has been closed and placed into receivership. Pursuant to the terms of the
 9 Stipulated Protective Order, these documents will not be released to the public and thus cannot
 10 harm future FDIC investigations of other banks. The Court finds that the law enforcement
 11 investigatory privilege does not shield these documents from production because their
 12 production would not harm any current or future investigatory or enforcement actions, and
 13 consequently Plaintiff's request for a protective order on this basis is DENIED.

14 The Court, however, does not order that these documents be produced to Defendants.
 15 Defendants represented to the Court multiple times during a September 2, 2015 telephone
 16 conference regarding this discovery dispute that Defendants sought the production of "any
 17 materials that are being withheld based on any privileges other than the law enforcement
 18 privilege." (Dkt. No. 135 at 7) (emphasis added). Defendants represented to the Court that they
 19 were "not pressing on the suspicious activity report data" because Defendants "understand that
 20 that's protected." (*Id.* at 16.) Plaintiff's privilege log identifies ten of the twelve withheld
 21 documents as suspicious activity reports, and the two other documents as "pertain[ing] to SARs
 22 information." (Dkt. No. 147 at 23.) Defendants have provided no explanation as to why they
 23 have changed their position on these documents, or why the Parties have burdened the Court's
 24

1 docket with multiple lengthy filings and telephonic requests regarding the production of
2 documents Defendants indicated they neither needed nor wanted. The Court finds that any
3 entitlement Defendants may have had to these documents has been waived. Because the Court is
4 not ordering the production of any additional documents at this time, the Court DENIES
5 Defendants' request for relief from the current case schedule.

6

7 The clerk is ordered to provide copies of this order to all counsel.

8

9 Dated this 29th day of September, 2015.

10

11

12



13 Marsha J. Pechman
Chief United States District Judge

14

15

16

17

18

19

20

21

22

23

24